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6 *Representing the United States of America*

7 UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

8 -oOo-

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 vs.

12 DEVENDRA I. PATEL, M.D.,

13 Defendant.

Case No.: 3:17-cr-114 LRH-VPC

PLEA AGREEMENT UNDER  
FED. R. CRIM. P. 11 (c)(1)(A)  
and (B)

14 Plaintiff United States of America, by and through DAYLE ELIESON, United  
15 States Attorney, and SUE FAHAMI and KILBY MACFADDEN, Assistant United  
16 States Attorneys, the Defendant, DEVENDRA I. PATEL, M.D. and the Defendant's  
17 attorney, LANCE MANINGO, ESQ., submit this Plea Agreement under Fed. R.  
18 Crim. P. 11(c)(1)(A) and (B).

19 **I. SCOPE OF AGREEMENT**

20 The parties to this Plea Agreement are the United States of America and  
21 DEVENDRA I. PATEL (the Defendant). This Plea Agreement binds the Defendant  
22 and the United States Attorney's Office for the District of Nevada. It does not bind  
23 any other prosecuting, administrative, or regulatory authority, the United States

1 Probation Office, or the Court.

2 The Plea Agreement sets forth the parties' agreement regarding criminal  
3 charges referenced in the Plea Agreement and applicable sentences, fines,  
4 restitution and forfeiture. It does not control or prohibit the United States or any  
5 agency or third party from seeking any other civil or administrative remedies  
6 directly or indirectly against the Defendant.

7 **II. DISPOSITION OF CHARGES AND WAIVER OF TRIAL RIGHTS**

8 A. Guilty Plea. The Defendant knowingly and voluntarily agrees to plead  
9 guilty to Count One of the Criminal Indictment filed December 6, 2017:

10 **Count One:** Distribution of a Controlled Substance, in violation of Title 21,  
11 United States Code, Section 841(a)(1) and (b)(1)(C).

12 At the time of sentencing, the Government will move to dismiss the remaining  
13 counts of the Criminal Indictment.

14 B. Waiver of Trial Rights. The Defendant acknowledges that he has been  
15 advised and understands that by entering a plea of guilty he is waiving -- that is,  
16 giving up -- certain rights guaranteed to all Defendants by the laws and the  
17 Constitution of the United States. Specifically, the Defendant is giving up:

18 1. The right to proceed to trial by jury on all charges, or to a trial  
19 by a judge if the Defendant and the United States both agree;

20 2. The right to confront the witnesses against the Defendant at  
21 such a trial, and to cross-examine them;

22 3. The right to remain silent at such a trial, with assurance that his  
23 silence could not be used against him in any way;

1           4.     The right to testify in his own defense at such a trial if he so  
2 chooses;

3           5.     The right to compel witnesses to appear at such a trial and testify  
4 in the Defendant's behalf, and;

5           6.     The right to have the assistance of an attorney at all stages of  
6 such proceedings.

7           C.     Withdrawal of Guilty Plea. The Defendant will not seek to withdraw  
8 his guilty plea after he has entered it in court.

9           D.     Additional Charges. The United States agrees not to bring any  
10 additional charges against the Defendant arising out of the investigation in the  
11 District of Nevada which culminated in the Criminal Indictment and this Plea  
12 Agreement and based on conduct known to the United States, except that the United  
13 States reserves the right to prosecute the Defendant for any crime of violence as  
14 defined by 18 U.S.C. § 16 in which the Defendant may have participated.

15 **III.   ELEMENTS OF THE OFFENSE**

16           **Count One:** The elements of Distribution of Controlled Substance in violation  
17 of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) are:

18           First, beginning on or about September 2015 and January 2016 and later  
19 dates, the Defendant knowingly distributed Schedule II controlled substances, to wit:  
20 Oxycodone and Hydrocodone;

21           Second, the Defendant knew that the controlled substances were Oxycodone  
22 and Hydrocodone or some other prohibited drug;

23           Third, the Defendant distributed the controlled substances outside the usual

1 course of professional practice and not for a legitimate medical purpose; and

2 Fourth, the Defendant intended to distribute the controlled substances  
3 outside the course of his professional practice.

4 Ninth Cir. Model Criminal Jury Instr., Criminal 9.18; Title 21 C.F.R. §  
5 1306.04; *United States v. Feingold*, 454 F.3d 1001, 1008 (9th Cir. 2006)

6 **IV. FACTS SUPPORTING GUILTY PLEA**

7 A. The Defendant will plead guilty because he is, in fact and under the  
8 law, guilty of the crimes charged.

9 B. The Defendant acknowledges that if he elected to go to trial instead of  
10 pleading guilty, the United States could prove his guilt beyond a reasonable doubt  
11 and establish its right to forfeit the specified property by preponderance of the  
12 evidence. The Defendant further acknowledges that his admissions and declarations  
13 of fact set forth below satisfy every element of the charged offense.

14 C. The Defendant waives any potential future claim that the facts he  
15 admitted in this Plea Agreement were insufficient to satisfy the elements of the  
16 charged offense.

17 D. Both the United States and the Defendant agree that this section of the  
18 Plea Agreement does not contain all of the relevant information known to the  
19 Defendant. The parties also agree that the facts contained in Section IV provide a  
20 sufficient factual basis for the crime to which Defendant is pleading guilty, but the  
21 facts contained in Section IV are not an exhaustive statement by the Defendant.

22 E. The Defendant admits and declares under penalty of perjury that the  
23 facts set forth below are true and correct:

1 At all times relevant to the Criminal Indictment:

2 1. The Defendant, DEVENDRA I. PATEL, M.D. ("Defendant"), was a  
3 licensed physician who, since 2004, practiced medicine in Nevada under Nevada  
4 License Number 11068, specializing in cardiology in Elko, Nevada.

5 2. As part of his medical practice, he prescribed Schedule II Controlled  
6 Substances, including Hydrocodone and Oxycodone, under a Drug Enforcement  
7 Administration ("DEA") license number BP6740662.

8 3. Defendant knew that under the Controlled Substances Act, Title 21,  
9 United States Code, Section 841(a) *et seq.*, and Title 21, Code of Federal Regulations,  
10 Section 1306.04, a prescription for a Schedule II controlled substance was lawful  
11 only when written for a legitimate medical purpose by a practitioner acting in the  
12 usual course of his or her professional practice.

13 4. Between approximately September 2015 and January 2016 and later  
14 dates, Defendant prescribed dosages and amounts of Oxycodone and Hydrocodone,  
15 to patients outside the usual course of his professional practice and without a  
16 legitimate medical purpose.

17 5. Defendant did so with the intent to prescribe Oxycodone and  
18 Hydrocodone outside the course of his professional practice and without a legitimate  
19 medical purpose.

20 6. All of the foregoing occurred in the State and Federal District of  
21 Nevada and elsewhere.

22 **V. COLLATERAL USE OF FACTUAL ADMISSIONS**

23 The facts set forth in Section IV of this Plea Agreement shall be admissible

1 against the Defendant under Fed. R. Evid. 801(d)(2)(A) at sentencing for any  
2 purpose. If the Defendant does not plead guilty or withdraws his guilty plea, the  
3 facts set forth in Section IV of this Plea Agreement shall be admissible at any  
4 proceeding, including a trial, for impeaching or rebutting any evidence, argument or  
5 representation offered by or on the Defendant's behalf. The Defendant expressly  
6 waives all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 regarding the  
7 use of the facts set forth in Section IV of this Plea Agreement.

## 8 VI. APPLICATION OF SENTENCING GUIDELINES PROVISIONS

9 A. Discretionary Nature of Sentencing Guidelines. The Defendant  
10 acknowledges that the Court must consider the United States Sentencing Guidelines  
11 ("USSG" or "Sentencing Guidelines") in determining the Defendant's sentence, but  
12 that the Sentencing Guidelines are advisory, not mandatory, and the Court has  
13 discretion to impose any reasonable sentence up to the maximum term of  
14 imprisonment permitted by statute.

15 B. Offense Level Calculations. The parties stipulate to the following  
16 calculation of the Defendant's offense level under the Sentencing Guidelines,  
17 acknowledge that these stipulations do not bind the Court, and agree that they will  
18 not seek to apply any other specific offense characteristics, enhancements or  
19 reductions:

20 The Defendant acknowledges that the statutory maximum sentence and any  
21 statutory minimum sentence limit the Court's discretion in determining the  
22 Defendant's sentence notwithstanding any applicable Sentencing Guidelines  
23 provisions.

**Group 1: Count 1: 21 U.S.C. §§ 841(a)(1), (b)(1)(C)**

<b>Offense Level Calculation</b>		<b>USSG</b>
Base Offense Level <sup>1</sup>	20	§ 2D1.1(c)(10)
Use of Special Skill	+2	§ 3B1.3
<b>Adjusted Offense Level (Subtotal)</b>	<b>22</b>	
Contingent Reduction for Acceptance of Responsibility	-2	§ 3E1.1(a)
Contingent Reduction for Government Motion for Acceptance of Responsibility	-1	§ 3E1.1(b)
<b>Final Adjusted Offense Level</b>	<b>19</b>	

C. Reduction of Offense Level for Acceptance of Responsibility. Under USSG § 3E1.1(a), the United States will recommend that the Defendant receive a two-level downward adjustment for acceptance of responsibility unless he (a) fails to truthfully admit facts establishing a factual basis for the guilty plea when he enters the plea; (b) fails to truthfully admit facts establishing the amount of restitution owed when he enters his guilty plea; (c) fails to truthfully admit facts establishing the forfeiture allegations when he enters his guilty plea; (d) provides false or misleading information to the United States, the Court, Pretrial Services, or the Probation Office; (e) denies involvement in the offense or provides conflicting statements regarding his involvement or falsely denies or frivolously contests conduct relevant to the offense; (f) attempts to withdraw his guilty plea; (g) commits or attempts to commit any crime; (h) fails to appear in court; or (i) violates the

<sup>1</sup> The Group 1 base offense level was calculated as follows: there were three prescriptions of Hydrocodone/Oxycodone for a total 10,800 milligrams of Hydrocodone/Oxycodone. This is equal to 72.36 kg of marijuana (10.8g x 6700g equals 72,360 grams). The parties stipulate to this calculation for purposes of sentencing only.

1 conditions of pretrial release.

2 Under USSG §3E1.1(b), if the Court determines that the Defendant's total  
3 offense level, before operation of § 3E1.1(a), is 16 or higher, and if the United States  
4 recommends a two-level downward adjustment pursuant to the preceding  
5 paragraph, the United States will move for an additional one-level downward  
6 adjustment for acceptance of responsibility before sentencing because the Defendant  
7 communicated his decision to plead guilty in a timely manner that enabled the  
8 United States to avoid preparing for trial and to efficiently allocate its resources.

9 D. Criminal History Category. The Defendant acknowledges that the  
10 Court may base his sentence in part on the Defendant's criminal record or criminal  
11 history. The Court will determine the Defendant's Criminal History Category under  
12 the Sentencing Guidelines.

13 E. Relevant Conduct. The Court may consider any counts dismissed  
14 under this Plea Agreement and all other relevant conduct, whether charged or  
15 uncharged, in determining the applicable Sentencing Guidelines range and whether  
16 to depart from that range.

17 F. Additional Sentencing Information. The stipulated Sentencing  
18 Guidelines calculations are based on information now known to the parties. The  
19 parties may provide additional information to the United States Probation Office  
20 and the Court regarding the nature, scope, and extent of the Defendant's criminal  
21 conduct and any aggravating or mitigating facts or circumstances. Good faith efforts  
22 to provide truthful information or to correct factual misstatements shall not be  
23 grounds for the Defendant to withdraw his guilty plea. The Defendant acknowledges



1 that the United States Probation Office may calculate the Sentencing Guidelines  
2 differently and may rely on additional information it obtains through its  
3 investigation. The Defendant also acknowledges that the Court may rely on this and  
4 other additional information as it calculates the Sentencing Guidelines range and  
5 makes other sentencing determinations, and the Court's reliance on such  
6 information shall not be grounds for the Defendant to withdraw his guilty plea.

## 7 VII. APPLICATION OF SENTENCING STATUTES

8 A. Maximum Penalty. The maximum penalty under 21 U.S.C. §§ 841(a)  
9 and 841(b)(1)(C) is 20 years imprisonment, a fine of \$1,000,000, or both.

10 B. Factors Under 18 U.S.C. § 3553. The Court must consider the factors  
11 set forth in 18 U.S.C. § 3553(a) in determining the Defendant's sentence. However,  
12 the statutory maximum sentence and any statutory minimum sentence limit the  
13 Court's discretion in determining the Defendant's sentence.

14 C. Parole Abolished. The Defendant acknowledges that his prison  
15 sentence cannot be shortened by early release on parole because parole has been  
16 abolished.

17 D. Supervised Release. In addition to imprisonment and a fine, the  
18 Defendant will be subject to a three-year term of supervised release. Supervised  
19 release is a period of time after release from prison during which the Defendant will  
20 be subject to various restrictions and requirements. If the Defendant violates any  
21 condition of supervised release, the Court may order the Defendant's return to prison  
22 for all or part of the term of supervised release, which could result in the Defendant  
23 serving a total term of imprisonment equal to the statutory maximum prison

1 sentence of 20 years imprisonment.

2 E. Special Assessment. The Defendant will pay a \$100.00 special  
3 assessment per count at the time of sentencing.

4 **VIII. POSITIONS REGARDING SENTENCE**

5 The Government will recommend that the Court sentence the Defendant to a  
6 sentence within the Sentencing Guidelines range as determined by the Court.  
7 Notwithstanding its agreement to recommend that the Defendant be sentenced as  
8 described in this Plea Agreement, the United States reserves its right to defend any  
9 lawfully imposed sentence on appeal or in any post-conviction litigation.

10 The Defendant may seek a downward adjustment pursuant to 18 U.S.C. §  
11 3553, including probation, from any sentence the Court may impose.

12 The Defendant acknowledges that the Court does not have to follow these  
13 recommendations.

14 **IX. RESTITUTION**

15 In exchange for benefits received under this Plea Agreement, the Defendant  
16 agrees to make full restitution in an amount to be determined by the Court for all of  
17 the losses the Defendant caused by his schemes or offenses, whether charged or  
18 uncharged, pleaded to or not, and by all of his relevant conduct. 18 U.S.C. §  
19 3663(a)(3).

20 **X. FINANCIAL INFORMATION AND DISPOSITION OF ASSETS**

21 Before or after sentencing, upon request by the Court, the United States, or  
22 the Probation Office, the Defendant will provide accurate and complete financial  
23 information, submit sworn statements, and/or give depositions under oath

1 concerning his assets and his ability to pay. The Defendant will surrender assets he  
2 obtained directly or indirectly as a result of his crimes, and will release funds and  
3 property under his control in order to pay any fine, forfeiture, or restitution ordered  
4 by the Court.

5 **XI. THE DEFENDANT'S ACKNOWLEDGMENTS AND WAIVERS**

6 A. Plea Agreement and Decision to Plead Guilty. The Defendant  
7 acknowledges that:

8 (1) He has read this Plea Agreement and understands its terms and  
9 conditions;

10 (2) He has had adequate time to discuss this case, the evidence, and  
11 this Plea Agreement with his attorney;

12 (3) He has discussed the terms of this Plea Agreement with his  
13 attorney;

14 (4) The representations contained in this Plea Agreement are true  
15 and correct, including the facts set forth in Section IV; and

16 (5) He was not under the influence of any alcohol, drug, or medicine  
17 that would impair his ability to understand the Agreement when he considered  
18 signing this Plea Agreement and when he signed it.

19 The Defendant understands that he alone decides whether to plead guilty or  
20 go to trial, and acknowledges that he has decided to enter his guilty plea knowing of  
21 the charges brought against him, his possible defenses, and the benefits and possible  
22 detriments of proceeding to trial. The Defendant also acknowledges that he decided  
23 to plead guilty voluntarily and that no one coerced or threatened him to enter into

1 this Plea Agreement.

2       B.     Waiver of Appeal and Post-Conviction Proceedings. The Defendant  
3 knowingly and expressly waives: (a) the right to appeal any sentence imposed within  
4 or below the applicable Sentencing Guideline range as determined by the Court; (b)  
5 the right to appeal the manner in which the Court determined that sentence on the  
6 grounds set forth in 18 U.S.C. § 3742; and (c) the right to appeal any other aspect of  
7 the conviction or sentence and any order of restitution or forfeiture.

8       The Defendant also knowingly and expressly waives all collateral challenges,  
9 including any claims under 28 U.S.C. § 2255, to his conviction, sentence, and the  
10 procedure by which the Court adjudicated guilt and imposed sentence, except non-  
11 waivable claims of ineffective assistance of counsel.

12       The Defendant reserves only the right to appeal any portion of the sentence  
13 that is an upward departure or an upward variance from the Sentencing Guidelines  
14 range determined by the Court.

15       The Defendant acknowledges that the United States is not obligated or  
16 required to preserve any evidence obtained in the investigation of this case.

17       C.     Removal / Deportation Consequences. The Defendant understands and  
18 acknowledges that if he is not a United States citizen, then it is highly probable that  
19 he will be permanently removed (deported) from the United States as a consequence  
20 of pleading guilty under the terms of this Plea Agreement. The Defendant has also  
21 been advised if his conviction is for an offense described in 8 U.S.C. § 1101(a)(43), he  
22 will be deported and removed from the United States and will not be allowed to  
23 return to the United States at any time in the future. The Defendant desires to plead

1 guilty regardless of any immigration consequences that may result from his guilty  
2 plea, even if the consequence is automatic removal from the United States with no  
3 possibility of returning. The Defendant acknowledges that he has specifically  
4 discussed these removal / deportation consequences with his attorney.

5 **XII. ADDITIONAL ACKNOWLEDGMENTS**

6 This Plea Agreement resulted from an arms-length negotiation in which both  
7 parties bargained for and received valuable benefits in exchange for valuable  
8 concessions. It constitutes the entire agreement negotiated and agreed to by the  
9 parties. No promises, agreements or conditions other than those set forth in this  
10 agreement have been made or implied by the Defendant, the Defendant's attorney,  
11 or the United States, and no additional promises, agreements or conditions shall  
12 have any force or effect unless set forth in writing and signed by all parties or  
13 confirmed on the record before the Court.

14 DAYLE ELIESON,  
15 United States Attorney

16 DATE 11/26/18

  
17 KILBY MACFADDEN  
Assistant United States Attorney

18 DATE 11/26/18

  
19 LANCE MANINGO  
Counsel for the Defendant

20 DATE 11/26/18

  
21 DEVENDRA I. PATEL, M.D.  
Defendant  
22  
23